

# Fair Labor Standards Act Handbook



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## I. The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) was passed by Congress in 1938 to establish a minimum wage, overtime compensation standards, record keeping requirements, child labor provisions, and other regulations that affect employers and labor. The law was enacted to meet the economic and social problems of that era. The intent of the law was to make overtime compensation expensive and to open up more employment opportunities to the working population. In 1985, the U.S. Supreme Court mandated the application of the Act to all state and local governments. Congress delayed the effective date of the Act as it applied to state and local governments to April 15, 1986.

The U.S. Department of Labor (DOL) is authorized to investigate any alleged violations and generally enforce the FLSA. DOL has the power to initiate court action against violators and penalties which can include jail terms, payment of double back pay, fines, and attorney fees. In general, **FLSA requires compliance with the following** :

- Payment of the minimum wage (currently \$5.15 per hour)
- Overtime pay for time worked over 40 hours in a workweek for non-exempt employees
- Restrictions on the employment of children
- Record keeping

**FLSA does not require the following:**

- Payment for time not worked, e.g., vacation, holiday, severance, or sick pay (the state has different policies for essential and non-essential employees)
- Payment for meal or rest periods
- Pay raises or fringe benefits
- Discharge notices, reason for discharge, or immediate payment of final wages to terminated employees
- Severance pay

The Department of Personnel & Administration (DPA) is responsible for advising state departments on matters pertaining to the law and for coordinating compliance. Over the years, employees have become more knowledgeable about the regulations. It is critical that all state departments comply with the law in good faith and that state supervisors are well trained in this area in order to prevent unnecessary overtime liability.

To assist state departments with the implementation of the FLSA, DPA is providing this handbook as a reference. Please be aware that DPA will not monitor individual departments. It continues to be each department's responsibility to be in compliance with FLSA regulations and any liability for failure to comply rests with individual departments. DPA will serve as a resource for technical assistance and will answer questions pertaining to the FLSA and compliance requirements. Staff may be reached by e-mail at [sue.huang@state.co.us](mailto:sue.huang@state.co.us) or telephone (303) 866-4219.

This handbook is intended to provide general FLSA guidelines only. The U.S. Department of Labor and/or the courts are the final authorities on matters relating to the FLSA.

**A. Minimum Wage** – The FLSA requires state employees to be paid at least minimum wage, which is currently \$5.15 an hour. To compute the hourly wage, the total earnings during the week are divided by the number of hours worked.

**B. Hours Worked** - According to the FLSA, non-exempt employees may not be employed for more than 40 hours in a week without receiving at least one and one-half times their regular rates of pay for the overtime hours. Exceptions are outlined on pages 12 - 14 of this document.

Work hours are the hours when employees are "suffered or permitted to work" for state departments. Even though some work may be done by non-exempt employees when not requested, as long as they are permitted to perform, the time is work time and must be paid. Even if an employee stays late voluntarily to complete a project, the additional work time must be paid. Sometimes supervisors are not aware of voluntary extra work; however, as long as there is evidence that the work was done, it must be paid. Departments may want to consider internal policies to discourage this type of "unauthorized" overtime work, even to the extent of issuing corrective actions to stop it.

**C. Waiting Time** - Whether waiting time is considered time worked under the FLSA depends upon the particular circumstances. For example, when an administrative assistant reads a book while waiting for dictation, the employee is considered working. Alternatively, consider a bus driver who takes students to a college game leaving 6:00 a.m. and arriving at 12:00 noon. Then, the driver is completely and specifically relieved from all duty until 6:00 p.m. to pick up the students for the return trip. The idle time from 12:00 noon to 6:00 p.m. is not work time.

Waiting time is work time when the period of waiting is unpredictable, is short, and employees are unable to use the time effectively for their own purposes. If an employee is working, the waiting time is considered work time.

Waiting time is not work time when employees are completely relieved from duty and the waiting period is long enough to enable them to use the time effectively for their own purposes. In order to be considered completely relieved from duty, employees must be told in advance that they may leave the job and that they will not have to return until a specified hour. Whether the waiting time is long enough to enable employees to use the time effectively for their own purposes depends upon all of the facts and circumstances of the case. Departments must review each individual case in order to determine if waiting time is work time.

**D. On-Call** – According to the FLSA, an employee who is required to remain on call on the employer's premises, or must be so close that the time cannot effectively be

used for his or her own purposes, is working while “on call.” On the other hand, an employee who is permitted to leave the premises and is merely required to leave word where he or she may be reached, is not working while on call. When evaluating whether or not on-call time is work time, departments must examine employees’ opportunities to pursue personal interests. Departments can do the following to reduce the chance that on-call time will be considered work time:

- Provide on-call employees with beepers, pagers, or cellular phones.
- Allow employees to handle calls over the phone as opposed to requiring their physical return to work.
- Allow a reasonable period of time to respond.
- Allow employees to decline a certain number of calls or to swap calls with other employees.
- Discipline employees only for relatively serious abuses of the policy.
- Provide employees with as much notice of their on-call duty as possible.

**E. Break and Meal Periods** - Breaks are not mandatory, i.e., employees are not entitled to two 15-minute breaks each day. Breaks of short duration, when allowed, are considered work time. Supervisors have the discretion to allow or not allow breaks for their employees. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time if an employee is completely relieved from duty.

**F. Meeting and Training Time** - Attendance at lectures, meetings, training programs, and similar activities is not counted as work time if all of the following four criteria are met: (1) the training is outside normal work hours, (2) the training is voluntary, (3) the training is not job related, (4) no other work is concurrently performed. Whether or not a department pays for the training is immaterial.

When employees are required, as part of the work assignment, to attend training classes, the training time is work time. Training is job related if it is designed to make employees perform their current jobs more effectively, as opposed to preparing them for a different job or a new or additional skill.

**G. Travel Time** - Whether time spent in travel is compensable depends upon the kind of travel involved.

- **Home-to-work travel:** Traveling from home before the regular workday begins and returning home at the end of the workday is ordinary home-to-work travel, and is not considered work time, even when a state vehicle is used. If an employee is required to work at home first and then travel to an office, the home-to-work travel time is work time.
- **Special one day assignment in another city:** An employee who normally works at a fixed location, but travels to a different city for a work related assignment and then returns home the same day, is considered working even while traveling. The department may deduct the time that the employee would

normally spend commuting to the regular work site. If the employee is completely relieved from duty during the meal break, that time does not have to be paid.

- **Travel that is all in the day's work:** Time spent by an employee in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked. Home to the first job site is not work time. When the distance between home to the first job site is substantially longer than the usual home-to-work travel, the department may exercise its discretion in allowing some of the travel time to be work time.
- **Travel away from the home community:** Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is work time when it cuts across the employee's normal work day. The paid time includes not only hours worked on regular working days during normal working hours but also travel time during corresponding hours on non-working days, and any other hours that an employee actually performs work for the state. The time spent by an employee who travels outside of regular working hours as a passenger on public transportation, such as an airplane, train, etc. may be considered work time. It is the department's discretion to include this type of travel time in the work hours count.

## II. Employees Under FLSA

**NON-COVERED EMPLOYEES.** Under the FLSA, there are two general types of employees: non-covered and covered employees. Non-covered employees include elected officials, their personal staffs, policy-making appointees, legal advisors, legislative employees (except library employees), and independent contractors. These employees are not covered under the minimum wage and overtime provisions:

- A. Personal staff of an elected official** are employees who (1) must be appointed by and serve solely at the pleasure or discretion of an elected official, (2) must be under the direct supervision of the elected official (this category does not include an employee who is supervised by someone other than the elected official), (3) must have regular contact with the elected official and (4) must not be subject to civil service laws.
- B. Policy-making appointees** are employees who have been appointed by an elected official to serve in a policy-making capacity. For example, executive directors appointed by the governor are policy-making appointees.
- C. Legal advisors** are employees who serve as legal advisors to an elected official. They must deal with highly confidential and sensitive legal work and/or give advice directly to an elected official and/or be personally accountable to the elected official.

**D. Legislative employees** are employees who work in the legislative branch of the state. This includes all service employees in the state legislature, except employees of legislative branch libraries.

**E. Independent Contractors.** There are three key determining factors when qualifying an individual as an independent contractor.

- Employer control over work - Does the employer direct or control how the worker performs the task? Generally, someone who is told when, where and how to perform the work, what tools or equipment to use, what assistants to hire, where to purchase supplies, and the order in which the work is completed, should not be considered an independent contractor.
- Financial control - What is the worker's investment in the facilities he or she uses, to what extent is the worker making his or her services available to other organizations, how is the worker paid, and can the worker realize profits and losses from the services provided to the state? If one invests in the facilities and tools used, and if one's service is also available to others, this worker may be considered an independent contractor.
- Nature of the relationship - Is the organization providing benefits to the worker, are taxes being withheld from the worker's pay, are employer's taxes being paid on behalf of the worker, is the relationship expected to continue indefinitely, and is the service provided by the worker essential to the regular business of the organization? If so, the worker may not be considered an independent contractor.

When considering the utilization of contractors, be aware that employing a former state employee or a former state temporary employee on a personal service contract could violate state law. CRS 24-18-201 prohibits a former employee from being retained via a personal services contract within six months of termination to perform the same or similar duties. If a department hires laid-off employees within six months of their termination, in order to perform the same or similar work prior to lay-off, they cannot be considered independent contractors. These individuals will be eligible for benefits, and could have standing to pursue legal action against the state.

CRS 24-50-507 prohibits employees from accepting any direct or indirect personal benefit from a contracting department. In other words, an employee cannot obtain a contract with the state to perform work in which he or she has a direct interest because of potential conflict of interest.

**F. Prisoners** who are required to work for the state are not covered employees. They do not need to be paid minimum wage. When counting the number of employees supervised by a state employee, the number of prisoners working for the employee must be excluded for FLSA purposes.

**G. Bona Fide Volunteers** are individuals who perform services for the state for civic, charitable, or humanitarian reasons. They volunteer to render their services without promise, expectation or receipt of compensation. These volunteers are not covered employees under the FLSA.

**H. State Employees Volunteering Services to the State.** Departments may not allow their employees to volunteer, without compensation, additional time to do the same type of work for which they are employed. For example, when an administrative assistant volunteers to teach meat cutting at a community college, this voluntary work is different from the employee's primary duty, so the time working at the community college does not have to be added to work hours for the purpose of overtime compensation. However, if the same administrative assistant volunteers to type a report for the Dean's office at a community college, the time must be added to the employee's regular work hours. The reason is that the volunteer work is closely related to the employee's primary duty. It does not matter if the employee does the volunteer work for a different department. All state departments are considered to be one employer under the FLSA.

**I. Trainees or Interns** are not employees under FLSA if all of the following criteria are met:

- The training, even though it may include actual operation of the state's facilities, is similar to that which would be given in a vocational school.
- The training is for the benefit of the trainees or students.
- The trainees or students do not displace regular employees, but work under close supervision.
- A department that provides the training receives no immediate advantage from the activities of the trainees or students and, on occasion, the operations may even be impeded.
- The trainees or students are not necessarily entitled to a job at the conclusion of the training period.
- A department and trainees or students understand that the trainees or students are not entitled to wages for the time spent in training.

Even if a department chooses to compensate the trainees or students, if the above criteria are met, the trainees or students are not state employees, and are not covered under FLSA. On the other hand, if a department benefits from the services provided by the trainees, the trainees may become "employees" under FLSA. Be very careful not to confuse "training a trainee" with "receiving services from a trainee."

**COVERED EMPLOYEES** under the FLSA include Exempt, Non-Exempt, and Special categories. Within the state, covered employees include exempt, non-exempt, law enforcement, and health care employees.

**A. Exempt Employees** - Exempt employees are FLSA covered employees who meet the criteria that makes them exempt from the minimum wage and overtime

compensation provisions of the FLSA. The four exemption categories that apply to state employees are Executive, Administrative, Professional, and Computer Professional. Departments and employees should always closely check the exact terms and conditions of an exemption in light of the employee's actual duties in order to determine the exemption status for each individual position. The ultimate burden of supporting the actual application of an exemption rests on the employer. An exempt employee is not eligible for overtime compensation provided that the **salary test** (detail follows) is met for these employees.

**B. Non-Exempt Employees** - Non-exempt employees are FLSA covered employees who do not meet the criteria for any of the exemption categories and are covered by the FLSA. All hourly employees (regardless of pay levels and employment status) are non-exempt and are automatically eligible for overtime compensation regardless of the level of job responsibilities. Exceptions are medical doctors, attorneys, teachers, and employees in computer-related occupations who receive an hourly rate higher than \$27.63. Minimum wage and overtime compensation must be paid to non-exempt employees under FLSA provisions. Part-time non-exempt employees do not earn overtime unless they work more than 40 hours in a designated workweek.

### III. Exemption

Some employees are exempt from the overtime pay provisions, some from both minimum wage and overtime pay provisions, and some from the child labor provisions of the FLSA. Exemptions are typically applied on an individual workweek basis. Employees performing exempt and non-exempt duties in the same workweek are normally not exempt in that particular workweek, particularly when the majority of time is spent on non-exempt duties.

**A. Salary Test** – According to the FLSA, an exempt employee is paid a predetermined amount (an amount constituting all or part of the compensation) on a pre-determined basis. An exempt employee does not have to be paid for any workweek in which no work is performed; however, no deductions may be made if the employee is ready, willing, and able to work. The following are some situations that salary may be reduced without losing exempt status.

- **Partial-Day Absence Pay Reduction** – The FLSA allows special provisions for public employers to reduce exempt employees' pay when they absent themselves from work. As a public department, the state has a pay system established by statute pursuant to principles of public accountability. Under the system, employees accrue personal leave and sick leave. Departments may reduce the pay of exempt employees for absences of less than one work day. This can happen when accrued leave is not used by an employee because (1) permission for its use has not been sought or has been sought and denied, (2) accrued leave has been exhausted or (3) the employee chooses to use leave without pay.

- Deductions from an exempt employee's pay for absences due to a budget-required furlough are allowed except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

A department cannot reduce an exempt employee's pay without losing the employee's exemption status except when:

- An employee is absent due to jury duty, attendance as a witness, or temporary military leave.
- An employee violates a safety rule that is not of any major significance. Safety rules of major significance include only those relating to the prevention of serious danger to the facility, or other employees.

Suspension (leave without pay) for less than one whole workweek will change an exempt employee's status to non-exempt for that week.

**B. Executive Exemption** – This exemption is applicable to employees who have management as their primary duty. They direct the work of two or more full-time employees and have the authority to hire and fire or make recommendations regarding decisions affecting the employment status of others. The employees regularly exercise a high degree of independent judgment in their work and receive a salary which meets the requirements of the exemption. In addition, the employees do not devote more than 40% of their time to non-management functions, or 50% if they are earning more than \$250.00 a week (a situation applicable to most state employees).

When considering the "primary duty" criteria, a useful tool can be the 50% rule of thumb. That is, the managing duties should constitute at least 50% of the executive's time. In a few cases, the 50% rule may not apply. Although an executive exempt employee may not spend more than 50% of time in managerial duties, the employee might nevertheless have management as the primary duty if other pertinent factors support such a conclusion.

**C. Administrative Exemption** – This exemption is applicable to employees who perform office or non-manual work which is directly related to the management policies or general business operations of their employer or their employer's customers. Or, the employees perform such functions in the administration of an educational establishment. The employees regularly exercise discretion and judgment in their work. They assist a proprietor or executive to perform specialized or technical work, or execute special assignments. Some examples may be fully operational specialists or specialists with staff authority like tax experts, insurance experts, compensation and job evaluation specialists, investment consultants, and statisticians, etc.. In addition, the employees receive a salary which meets the requirements of the exemption and do not devote more than 40% of their time to work other than as stated above.

Of all the exemption categories, the administrative exemption is probably the most difficult to interpret and apply. It is important for a department to carefully consider the criteria needed to classify an employee in this group. The key requirement for the administrative exemption is that the employee's primary work is directly related to management policies or general business operations. An employee who is primarily involved in carrying out the day-to-day operations of a department, instead of overall business or policies management, is involved in "production work" only; therefore, the administrative exemption does not apply. Pay level is not the determining factor for exemption designation. Some state positions may receive a relatively high rate of pay; however, due to the day-to-day work duties (e.g., investigation at a regulatory division), these types of job assignments would be considered "production work" rather than "administrative work."

**D. Professional Exemption** - This is applicable to employees who perform work requiring advanced knowledge and education, work in an artistic field which is original and creative, or work as a teacher. The employees perform work which is intellectual and varied in character and the accomplishment of which cannot be standardized as to time. The employees must be paid on a salary basis that meets the "salary test" (except doctors, lawyers, teachers, and certain computer occupations who receive an hourly rate exceeding \$27.63).

**E. Computer Professional Exemption** – This applies to computer professionals who have primary duties in one or more of the following:

- Applying systems analysis techniques and procedures
- Designing computer systems based on, and related to, user specifications
- Creating or modifying computer programs based on, and related to, system design specifications
- Creating or modifying computer programs related to machine operating systems
- A combination of the above duties, requiring the same skill level; and who must exercise discretion and make independent judgments on a regular basis

Computer systems analysts, computer programmers, software engineers, and other similarly skilled employees who are paid at a regular hourly rate exceeding \$27.63 are exempt from the minimum wage and overtime requirements of the FLSA. On the other hand, computer-related occupation employees who are paid at an hourly rate equal to or below \$27.63 are not exempt.

Departments are required to review all individual positions to determine their exemption status. Overtime exemption designation must be entered into the state employee data system (EMPL) as either N (non-exempt, i.e., eligible for overtime compensation) or E (exempt, i.e., not eligible for overtime compensation). A default value of N is entered into the system if a department fails to complete the record, which makes that employee eligible for overtime compensation.

## IV. Determining Workweek

**A. Regular Workweek** - The workweek includes all time during which an employee is required to be on the employer's premises, on duty, or at a prescribed work place. Under FLSA, a workweek for non-exempt employees is a "fixed and regularly recurring period of 168 hours - seven consecutive 24-hour periods." It may begin on any day of the week and at any hour of the day. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of hours worked. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act.

**B. Flexible Work Schedule** - Departments have discretion to designate an individualized workweek for each employee to accommodate any flexible work schedule. The designation of a specialized workweek should be done on a permanent basis; employees should be notified of such designation; and such designation should be filed in the employee's personnel file. It is critical that departments do not arbitrarily designate employees' workweeks to circumvent any overtime liability. The following examples illustrate how different workweeks may be defined and how work hours must be calculated for purposes of overtime hours calculation:

### Example 1 – Regular Workweek and Overtime Work

The workweek begins at midnight (12:01 a.m.) Friday and ends the following Friday at midnight (12:00 a.m.). No overtime work has occurred for these two workweeks for both Employee A and B.

	First Week							Second Week						
	SA	SU	M	T	W	TH	F	SA	SU	M	T	W	TH	F
<b>A</b>			8	8	8	8	8			8	8	8	8	8
<b>B</b>			10	10	10	10			10		10	10		10

Employee C worked 10 hours of overtime during the first week. Work hours cannot be averaged across workweeks.

	First Week							Second Week						
	SA	SU	M	T	W	TH	F	SA	SU	M	T	W	TH	F
<b>C</b>			10	10	10	10	10					10	10	10

### Example 2 – Flexible Workweek and Overtime Work

The workweek begins at noon (12:01 p.m.) Friday and ends the following Friday noon (12:00 p.m.). No overtime work has occurred for these two workweeks, since the employee works for 40 hours up to noon Friday, and 40 hours the second week.

	First Week							Second Week						
	SA	SU	M	T	W	TH	F	SA	SU	M	T	W	TH	F
<b>A</b>			9	9	9	9	4/5			9	9	9	8	

Employee B works 38 hours during the first week, and works 42 hours during the second week. Consequently, the employee earns two hours of overtime during the second week. This can happen if the employee comes to work at 10:00 a.m. and works for nine hours on Friday of the first week. Two hours are credited toward the first week, and seven hours are credited toward the second week.

	First Week							Second Week						
	SA	SU	M	T	W	TH	F	SA	SU	M	T	W	TH	F
<b>B</b>			9	9	9	9	2/7		9	9	9	8		

## V. Overtime Hour Calculation

According to the FLSA, holidays, vacation time, sick leave, etc., are not required to be counted when calculating overtime, except for essential positions. Under Personnel Rules and Procedures, P-3-36, "Essential, non-exempt positions, as designated by a department director, shall have paid leave counted as work time." Essential positions are those positions required to be on duty to perform the essential and/or emergency services of the department without delay and/or without interruption. Calculations of overtime hours and compensation for essential employees may be complicated depending on the types of leave involved. Several examples of overtime situations for essential employees are illustrated below.

### Overtime Calculation for Essential Employees

	Work Hours	Annual Leave	Sick Leave	Holiday Hours	Comp Hours off	Leave Without Pay	Total Work Hours for OT <sup>*1</sup>	Straight Pay Hours <sup>*2</sup>	Overtime Pay
Case 1	32	8		8	2 <sup>*3</sup>		48	42	8
Case 2	32	8				8	40	40	0
Case 3	32		8	8		8	48	40	8
Case 4	32					16	32	32	0

<sup>\*1</sup> Total hours for overtime purposes for essential employees include all paid and unpaid hours.

<sup>\*2</sup> Straight Pay Hours are the paid hours that employees earn (e.g., work hours, holiday, paid leave including compensatory time off). They exclude the unpaid leave hours.

<sup>\*3</sup> Compensatory off is not considered as paid-time leave, consequently, it is not included in the overtime work hours count.

## VI. Overtime Compensation

**A. Cash Payment** – For overtime compensation calculation, work hours cannot be averaged across two or more workweeks (there is an exception for health care and law enforcement partial exemption status). Overtime work must be paid at a rate of one and one-half times the regular hourly rate for each hour worked over 40 hours during the employee's designated workweek. Employees cannot waive their rights under FLSA. For example, non-exempt employees cannot opt to have overtime compensation paid at a rate lower than the required one and one-half rate. The hourly rate for overtime compensation must include applicable premium pay such as shift differential and on-call pay.

**B. Compensatory Time** – Compensatory time is allowed for public sector employees, and must be paid at a rate of not less than one and one-half hours of compensatory time for each hour of overtime work. According to Personnel Rules and Procedures, P-3-28A, a non-exempt employee may accumulate up to 60 hours of compensatory time at any given point in time. Any overtime worked in excess of this amount must be paid in cash. Accumulated compensatory time must be taken within four months after the end of the payroll period in which the overtime was worked, after which time it must be paid in cash. Departments may submit requests to the Director of the Department of Personnel & Administration to extend the compensatory time accrual limit and time frame in order to meet a department's operational needs.

**C. Compensatory Time Agreement** – For employees hired before April 15, 1986, compensatory time agreements are not needed provided that the department had a regular practice of granting compensatory time off in lieu of overtime pay. Departments must reach compensatory time agreements for employees hired on and after April 15, 1986. Departments are not allowed to force non-exempt employees into agreeing for compensatory time payment. For new hires, the compensatory time agreement can be established as a condition of employment. The Supreme Court's decision in June 2000 gave supervisors the authority to schedule employees' compensatory time off; however, it is required that employees be able to use the compensatory time for their own personal use. Compensatory time is part of employees' earnings. Employees are entitled to use this time as if using their cash compensation.

## VII. Special Situations

**A. State law enforcement employees** – The employees in law enforcement occupations are governed by the 7(k) exemption for overtime computation. Instead of a seven-day, 40-hour workweek, a special overtime standard has been established. The special standard allows the employer to establish a work period of from seven to 28 days. No overtime compensation is required until the number of hours worked exceeds the following maximum work hours limits. Law enforcement employees, including correctional employees, must meet all of the following criteria to be eligible for the 7(k) exemption:

- Be a uniformed or plainclothes employee engaged in law enforcement activity
- Have authority to enforce laws designed to protect public safety and property, detecting and preventing crimes
- Have the power to arrest
- Have undergone specialized training dealing with law enforcement

Work Period (Consecutive Work Days)	Maximum Work Hours (Limit)
28	171
27	165
26	159
25	153
24	147
23	141
22	134
21	128
20	122
19	116
18	110
17	104
16	98
15	92
14	86
13	79
12	73
11	67
10	61
9	55
8	49
7	43

Departments may designate their law enforcement positions as 7(k) exempt, provided that the criteria listed above are met. The work periods for 7(k) exempt employees cannot be less than seven consecutive nor more than 28 consecutive days. Individual employees may have varying work periods. An established work period may not be changed unless the change is intended to be permanent and is not designed to evade the overtime requirements of the Act.

Law enforcement employees who are in attendance at a training facility are not considered to be on duty during the time they are not in class or at a training session, if they are free to use the time for personal use.

**B. Hospital and Nursing Home Employees** – There is a partial exemption under the FLSA for employees working in hospitals and nursing homes that offer residential care. Hospital and nursing home employees at departments providing residential care (state hospitals, nursing homes, mental institutions, and regional centers) are included

in the partial exemption. Departments not offering residential care must calculate overtime using a seven-day workweek. The partial exemption allows overtime to be calculated on a 14-day period (as opposed to seven days) if all of the following conditions are met:

- Employees are paid overtime if they work more than eight hours per day.
- Hours worked exceeding 80 hours over a 14-day period are paid overtime.
- There is an agreement or understanding, preferably in writing, between employees and the employer, for using the 14-day period for overtime purposes.

The exemption designation and schedule must be established by the department and affected employees must be notified of the schedule change.

Remember, if a 14-day period is designated for an employee who qualifies for the health care category, overtime needs to be paid not only after more than 80 total hours in a 14-day period, but also after more than eight hours in a day.

**C. Dual Employment** - A non-exempt employee who accepts additional hours of paid employment with another state department, regardless of rate of pay, is entitled to overtime compensation for any time worked over 40 hours in a seven day period, when hours worked in the two departments are combined. In a dual employment situation, the following issues are critical:

- The state is one employer.
- Work time from both primary and secondary employment (e.g., concerts, sports events, contractual lecturer/instructor) must be combined for overtime compensation purposes unless the following criteria are met:
  - the secondary employment is in a different occupational category from the employee's primary employment
  - the secondary employment is sporadic, infrequent, irregular, or occurring in scattered instances
  - the secondary employment is done on a voluntary basis.

The regular rate for the week that the employee works for two different departments is the weighted average of the two rates. That is, total earnings are computed at the agreed upon rates, to include compensation during the workweek, and are then divided by the total number of hours worked at all jobs (see the illustration on the next page). Or, the employee and employers may reach an agreement on a regular pay rate to be used for overtime compensation.

If a state employee is hired by a private temporary employment service to work for a state department doing a different type of work from the primary job, the secondary employment does not qualify for "dual employment." The employee is considered to be working for two independent employers, and the time worked for the two employers does not have to be combined for the purpose of overtime compensation consideration.

<b>Dual Employment – Weighted Hourly Rate Calculation</b>			
Department	Hourly Rate	Hours Worked	Straight Pay to employee
A	\$12.00	30	\$360.00
B	\$15.00	20	\$300.00

Total hours worked	50	
Total earnings in a week		\$660.00
Hourly Rate for the week (total earnings/total hours)		\$13.20
Overtime hours (number of hours over 40)		10
Overtime dollars owed to the employee (hourly rate x # of overtime hours x .5)		\$66.00

## VIII. Child Labor

The FLSA child labor provisions (please see the following site for the list of prohibited jobs: [www.access.gpo.gov/nara/cfr/waisidx\\_98/29cfr579\\_98.html](http://www.access.gpo.gov/nara/cfr/waisidx_98/29cfr579_98.html)) are designed to protect the educational opportunities of youth and prohibit their employment in jobs and under conditions detrimental to their health or safety. The child labor provisions include some restrictions on hours of work for youth under 16 years of age and lists hazardous occupations too dangerous for young workers to perform.

The **hours limitations** provided by the Department of Labor are as follows:

- Youths 18 or older may perform any job, whether hazardous or not, for unlimited hours, in accordance with minimum wage and overtime requirements.
- Youths 16 and 17 years old may perform any non-hazardous job, for unlimited hours.
- Youths 14 and 15 years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs up to
  - 3 hours on a school day
  - 18 hours in a school week
  - 8 hours on a non-school day
  - 40 hours in a non-school week

In addition, work must be performed between the hours of 7:00 a.m. and 7:00 p.m., except from June 1 through Labor Day, when evening hours are extended to 9:00 p.m.

## IX. Record keeping Requirements

Employers are required to keep records for both non-exempt and exempt employees under FLSA regulations. Records for non-exempt employees differ from exempt employees.

### A. Non-exempt employees

- Name, home address, social security number (and date of birth if under 19);
- Gender and occupation;
- Time of the day and day of the week the employee's work week (or work period) begins and ends;
- Hours worked each work day and total hours worked each work week (or work period);
- Regular hourly pay for any week in which overtime was worked;
- Total daily or weekly straight time earnings;
- Total overtime or compensatory time earned, used or compensated in cash for the work week (or work period);
- Additions or deductions from wages paid each pay period;
- Total amount of wages paid each pay period;
- Date payment is made and the pay period covered.

### B. Exempt employees

- Name, home address, social security number (and date of birth if under 19);
- Gender and occupation;
- Time of the day and day of the week the employee's workweek begins;
- The basis on which wages are paid to the employee, in sufficient detail to permit calculation for each pay period of the employee's total compensation for employment including fringe benefits.

Records may be kept on paper, microfilm, or other basic source documents, as long as they are accessible and reproducible. Time records shall be retained for at least three years. The records must be made available to the DOL Administrator of the Wage and Hour Division (or a duly authorized representative) within 72 hours of a request. Finally, each state department is required to display the Wage and Hour Division's minimum wage poster which briefly outlines FLSA requirements.

## X. Employees' Right for Overtime Investigations

Employees who have disputes regarding overtime such as exemption designation, work hours calculation, payment of overtime compensation, and/or usage of compensatory time may request an investigation from the Personnel Director (Personnel Rules and Procedures P-8-23). Departments and employees are encouraged to informally resolve issues of overtime work, overtime compensation and/or position eligibility. However, such informal resolution does not negate an employee's right to appeal such issues to the Director.

## **XI. Enforcement of FLSA**

State departments were given until April 15, 1986 to be in total compliance with the Fair Labor Standards Act. Departments are held liable for noncompliance with FLSA provisions. The Wage and Hour Division within the U.S. Department of Labor is authorized to survey departments and to investigate complaints filed with them. In addition, it can initiate legal action against employers on an employee's behalf where such violations have been found to occur. When found in noncompliance, a department could end up paying:

- Attorney's fees
- Liquidated damages, commonly referred to as “double back pay”
- Fines (and/or jail terms depending on the severity of the violation)

### **REMEMBER**

The Colorado Department of Personnel & Administration will not assume liability if a department is not in compliance with FLSA. Any liability for failure to comply with the regulations of the FLSA rests with the individual department.

## **XII. Frequently Asked Questions**

### **1. Would working supervisors or lead workers be considered exempt under the executive category?**

It is important to examine the duties of supervisors or lead workers to determine if they meet the exemption criteria for executive exemption. If the majority of duties assigned to a lead worker is similar to the duties of non-exempt employees and the lead worker does not have authority over hiring and firing, it is likely that the lead worker may be considered non-exempt. The department should pay special attention to situations like this particularly when the pay for the lead worker is not substantially higher than the non-exempt workers.

### **2. What constitutes the "exercise of discretion" in tests of whether an employee is exempt from coverage or not?**

Exercise of discretion or independent judgment exists if an employee makes decisions freely without needing to consult a supervisor. The work must require the employee to compare and evaluate possible courses of conduct, and act or make a decision after various possibilities have been considered. This decision-making power should be real and substantial, free from immediate supervision, and exercised with regard to matters of consequence. All employees exercise discretion and make some independent judgment while performing their duties. The key is the “matters of consequence.”

### **3. What is the difference between a non-covered and an exempt employee?**

Non-covered employees are not bound by any provisions of the FLSA. Exempt employees, while covered by the FLSA, are exempt from the minimum wage and overtime provisions of the Act. Certain records are required to be kept for exempt employees, whereas there is no FLSA record keeping requirement for non-covered employees.

### **4. Are employees entitled to be paid for lunch time if they eat at their desks?**

If employees choose to eat at their desks and are completely relieved from duty, then the lunch time would not be considered as work time. However, if an employee is required to eat at the desk, the time would be considered work time. For those non-exempt employees who voluntarily eat at their desks, and answer phones or perform other work, they are "working." Even though it is voluntary, they must be paid for the work.

### **5. My supervisor called me in today and said he was reassigning me to work nights and weekends. I've worked there for 13 years and I don't think this is fair.**

Your supervisor has the right to ask you to work any day for any number of hours but must pay you time-and-a-half for any hours over 40 you work in a week unless you are paid on a salary basis and are exempt from overtime.

### **6. Must employees who come in early to work be paid for their time?**

The conditions under which the employees come to work early would determine whether that time would be considered work time. If an employee comes in early and is completely relieved from duty, the time would not be considered working time. However, if the employee comes in early and begins working (e.g., pre-shift briefing), then the time would be considered working time.

### **7. Is on-call time considered work time?**

The issue of pay for on-call time depends largely upon the employee's freedom while on-call, including how quickly the employee is required to respond to the call. While on call, if the employee is able to use the time freely for personal purposes, the time is not compensable. However, if the employee must remain on the employer's premises or remain so close to the premises that the employee cannot use the time freely, then that time is compensable. In general, the more restriction that is placed upon an employee while on-call, the more likely that the on-call time may be considered as work time.

**8. Do hours spent being treated (at the suggestion of the employer) for an on-the-job injury count as work time?**

Time spent by an employee on the first day of an on-the-job injury in waiting for and receiving medical attention at the direction of the employer during the employee's normal work hours on days when the employee is working would be considered work time. Beginning with the day after the on-the-job injury, time spent receiving medical attention is not work time.

**9. If an employee works 40 hours during the week, and then volunteers to help paint a state building on the weekend, would the employee be paid overtime?**

If the employee truly "volunteered" to work on the weekend without contemplation of pay and if the employee's regular job assignment is not painting, then the time would not be compensable. Remember, an employee cannot work for the same employer (the state) as a non-paid volunteer doing the same type of work for which the employee is paid.

**10. Is the time a state trooper spends in court waiting to testify considered work time?**

Time spent by a state trooper waiting to testify is considered work time under the FLSA.

**11. Would it be considered work time if a state trooper is off duty but responds to an emergency?**

The time spent responding to an emergency when a state trooper is off duty would be considered compensable time. Generally, all time during which the employee is "suffered or permitted" to work for the employer is compensable time.

**12. How are FLSA rules enforced?**

The Wage and Hour Division within the U. S. Department of Labor initiate investigations when complaints are filed or when particular industries are targeted for investigations. The Solicitor of Labor can bring a lawsuit on an employee's behalf in appropriate cases where the Wage and Hour Division finds that FLSA violations have occurred. Additionally, the Department of Justice can criminally prosecute persons (e.g., supervisor) who commit willful violations of the Act.

### **13. How can an appointing authority control overtime usage and resulting overtime cost?**

The appointing authority or designee shall be responsible for approving overtime work. Supervisors may control overtime by doing the following:

- Send a written announcement to all non-exempt employees that overtime work is not permitted unless authorized in advance.
- Develop a policy to ensure that employees are not interrupted during their lunch breaks (30 minutes or more). The best way to accomplish this is to have employees leave their work stations during their breaks.
- Develop a policy to ensure that employees are not allowed to start work before their regular starting time or to continue work after ending time.
- Develop a corrective action policy for employees who violate the rules. An employee may not voluntarily work overtime or waive the right to overtime compensation. (NOTE: Employees sometimes choose to ignore overtime policies and continue working extra hours before and/or after regular work time. Corrective actions may be issued to these employees according to established policies. However, the department is still liable for the overtime payment, if the unauthorized overtime work is acknowledged, witnessed and/or proven.)

### **14. How should an employee be compensated for a part-time job worked for another department in addition to the full-time assignment?**

If the employee is a non-exempt employee, all work hours must be totaled in order to calculate overtime compensation. The regular hourly rates and the number of hours worked for two departments are used to calculate the weighted average hourly rate for the week. Or, the employee and employer may agree on a regular hourly rate for overtime compensation. The employee must be compensated one and one-half times the established hourly rate for each hour worked over 40 hours per week.

If the employee is an exempt employee, the percentage of time spent on non-exempt duties (i.e., number of hours spent on non-exempt work during a workweek divided by 40 hours) must be calculated. If the employee spends less than 80% time during the workweek on exempt duties, the employee then loses the exemption status for that workweek. The overtime compensation shall be calculated as mentioned above.

### **15. Who are essential employees?**

Essential employees are those employees who are in positions that require them to be on duty to perform the essential and/or emergency services of the department without delay and/or without interruption. Executive directors and presidents of colleges and universities are responsible for designating whether or not an employee is essential. Remember, paid leaves of absence must be included for overtime work hours for essential employees.

## 16. How can supervisors schedule non-exempt employees' compensatory time off without violating the law?

According to the FLSA, when a non-exempt employee has accrued compensatory time and requests use of this compensatory time, the employee shall be permitted to use such time within a "reasonable period" after making the request, if such use does not "unduly disrupt" the operations of the department. The employee earned the compensatory time and should be able to use it for personal purposes. With the Supreme Court's decision (June 2000), supervisors may schedule employees' compensatory time off, provided that employees can use the time for their own purposes.

Supervisors may also amend employees' annual leave requests, reinstall the leave and charge the absence to accrued compensatory time. However, supervisors are advised to do so with employees' knowledge. In no case should the employees forfeit their earned leave due to this leave request alternation. **Only at the employee's initiation can sick leave be amended in a similar manner.**

Annual leave and compensatory time are "wages" earned by employees and may be used interchangeably. Sick leave is a form of insurance (not wages) where the state provides paid leave in order to maintain an employee's salary while absent for health-related circumstances of self or an immediate family member. For this reason, an employer cannot amend an employee's sick leave request nor coerce the employee to substitute compensatory time for sick leave.

This should not be confused with the situation where an employee has taken sick leave and worked extra hours in the same workweek. In this instance, it is appropriate to amend a sick leave request by the overtime hours worked in the week.

The following are two illustrations. The first illustration shows where supervisors are not allowed to substitute compensatory time.

- Employee A's work week was Saturday, January 6, 12:01 a.m. through Friday, January 12, 12:00 a.m. (midnight) - a consecutive 168 hours, 7-days week.
- Employee A is scheduled to work 8:00 a.m. – 5:00 p.m., Monday – Friday.
- Employee A has earned 24 compensatory hours before January 6.
- Employee A took one day of sick leave on Wednesday and submitted a sick leave slip.
- The supervisor cannot amend the sick leave slip and change it to one day of compensatory time off.

On the other hand, supervisors may consider amending a sick leave request to manage overtime liability in the following illustration.

- Employee B's work week was Saturday, January 6, 12:01 a.m. through Friday, January 12, 12:00 a.m. (midnight) - a consecutive 168 hours, 7-days week.

- Employee B worked Monday (8 hours), Tuesday (8 hours), Thursday (12 hours) and Friday (12 hours).
- Employee B took one day of sick leave on Wednesday and submitted a sick leave slip for 8 hours.
- The supervisor amends the sick leave slip and restores 8 hours of sick leave back to Employee B (without the amendment, the employee has logged in 48 hours for the week).
- As a result, Employee B worked 40 hours and did not take any sick leave.
- No overtime is earned by Employee B.

**17. When should an employee's position be reviewed for overtime eligibility?**

All positions should be reviewed for overtime eligibility when they are created or when duties are significantly changed. To initiate the review process, hiring authorities should contact their department's human resources office to assure that the review is completed and that employees are informed of the results and of their appeal rights.

**18. Can we reduce exempt employees' leave balances (e.g., accrued annual and/or sick leave) without losing their exemption status?**

Yes, the U.S. Department of Labor has adopted a special rule for public sector employers to reduce exempt employees' leave balances without losing the exempt employees' exemption status. The reason is that state employees are paid according to a pay system established by statute pursuant to principles of public accountability. Under the system, employees accrue annual and sick leave and are required to use the leave to cover absences for personal reasons or illness.

**19. Can we reduce exempt employees' pay for leave of absence without losing their exemption status?**

Yes, as described above, with this public accountability, when accrued leave is not used by exempt employees, supervisors may reduce exempt employees' pay, or place exempt employees on leave without pay on at least weekly basis (i.e., pay reduction) without being disqualified from exemption.

**20. How can I hire an exempt employee for secondary employment without losing the employee's exemption status?**

As a rule of thumb, an exempt employee should not spend more than 20% of work time on non-exempt duties. If an exempt employee regularly works part-time on non-exempt duties for more than 20% of a week, there is a good chance that the employee should be considered as non-exempt, i.e., eligible for overtime compensation.

**21. Does keeping a detailed time record for exempt employees destroy the exemption status for exempt employees?**

No. As a matter of fact, it is a good idea to keep detailed time records for exempt employees. Remember, keeping detailed time records for exempt employees does not mean that exempt employees are paid on an hourly basis. Within the state, all employees are paid according to a pay system established by statute pursuant to principles of public accountability. It is not inconsistent with the FLSA to keep track of the work records of exempt employees. Departments are encouraged to maintain time records for exempt employees, particularly when exemption status may be questioned and/or challenged for some "exempt" employees. Without official signed time records, employees' own logs may prevail if overtime disputes should be challenged by the employees.

**22. What exemption status should I designate for temporary employees?**

In general, the same exemption review process should be done for temporary positions. When temporary employees (except medical doctors, attorneys and teachers) are hired on an hourly basis, they are eligible for overtime compensation. Since temporary employees, according to the Director's Administrative Procedures, do not receive holiday pay, annual leave or sick leave benefits, and departments reduce temporary employees' pay due to leave of absences, most temporary employees are considered non-exempt.

**23. How do I calculate the overtime hourly rate if non-exempt employees are involved in some shift work during a workweek that accrues overtime work?**

The proper way of calculating the overtime hourly rate under this scenario is to calculate the weighted hourly rate for the entire workweek. For example, assume a non-exempt employee's regular hourly rate is \$10.00, and the third-shift pay is \$11.00 per hour. The employee works 30 hours regular shift, and 20 hours on third shift. The employee's total compensation within the week is  $\$10.00 \times 30 + \$11.00 \times 20 = \$520.00$ . The weighted hourly rate would be  $\$520.00 / (30 \text{ hours} + 20 \text{ hours}) = \$10.40$ . The weighted hourly overtime rate would be  $\$10.40 \times 1.5 = \$15.60$ . Remember, the overtime hourly rate needs to be calculated on a weekly basis, since it is possible that employees work different shift schedules in different weeks.

**24. Are state departments covered under COLORADO MINIMUM WAGE ORDER NUMBER 22? [www.coworkforce.com/LAB/](http://www.coworkforce.com/LAB/)**

No, state government is exempt from the Colorado Wage Law. The FLSA governs state departments' wage and overtime compliance.

## 25. Resources for further FLSA guidance

Issue	Internet Address
Applications to State Governments	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_553/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_553/toc.htm</a>
Child Labor	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_570/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_570/toc.htm</a>
Code of Federal Regulations, Title 29	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm</a>
Exemption Status	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_541/toc.htm</a>
FLAS Enforcement	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_579/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_579/toc.htm</a>
FLSA Act	<a href="http://www.dol.gov/dol/esa/public/regs/statutes/whd/0002.fair.htm">http://www.dol.gov/dol/esa/public/regs/statutes/whd/0002.fair.htm</a>
FLSA requirements	<a href="http://www.elaws.dol.gov/flsa/screen5.asp">http://www.elaws.dol.gov/flsa/screen5.asp</a>
Joint Employment	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_791/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_791/toc.htm</a>
Overtime Compensation	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_778/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_778/toc.htm</a>
Record keeping	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_516/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_516/toc.htm</a>
Wage/Hour Compliance Assistance	<a href="http://www.dol.gov/dol/esa/public/regs/compliance/whd/whdcomp.htm">http://www.dol.gov/dol/esa/public/regs/compliance/whd/whdcomp.htm</a>
Work Hours	<a href="http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_785/toc.htm">http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_785/toc.htm</a>

### **XIII. Sample Forms**

#### **A. Compensatory Time Agreement**

I agree to accept compensatory time off in lieu of cash payment for overtime work performed by me for my department. I understand that the rate of compensatory time off will be one-and-one half (1½) times all actual overtime work hours. I also understand that by signing this agreement, my department has the option to use either cash or compensatory time to pay the overtime work performed by me.

I have reached this agreement with my department freely and without coercion or pressure. This agreement stays effective until it is voided by mutual agreement.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Personnel Administrator  
or Supervisor

\_\_\_\_\_  
Date

**OR**

As a non-exempt employee (i.e., eligible for overtime compensation), I agree that my overtime work may, at my department's discretion, be reimbursed in compensatory time off in lieu of cash, at the rate of 1 ½ times the hours actually worked. This agreement between my department and me is effective for the term of my employment with the department. Accumulated compensatory time off must be taken within two months from the time it is earned. The scheduled time for taking compensatory time off may be directed by my department, provided that I can use the compensatory time for my own personal purposes. My supervisor has the responsibility to adjust my work schedule during one workweek in order to ensure that unnecessary overtime work may be incurred.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Personnel Administrator  
or Supervisor

\_\_\_\_\_  
Date

**B. Checklist for Executive Exemption** (Checklist published by the Thompson Publishing Group, Inc. Nov. 1991, Tab 1000. Pages 41 - 43, Washington, D.C.)

- \_\_\_\_\_ Employee is paid at least \$250/week.
- \_\_\_\_\_ Employee is paid on a "salary basis" (if the following three criteria are met)
  - \_\_\_\_\_ Paid established salary on weekly or longer basis regardless of the number of hours worked.
  - \_\_\_\_\_ No pay reduction is made for absences caused by jury duty, service as a witness or temporary military service.
  - \_\_\_\_\_ No suspension from work and from pay for less than one whole workweek.
- \_\_\_\_\_ Employee regularly supervises at least two full-time employees or the equivalent.
  - \_\_\_\_\_ Lead worker who labors alongside non-exempt employees and who spends less than 50% of time supervising other employees may not qualify.
- \_\_\_\_\_ Employee is in charge of and manages a department, division or other permanent organizational unit.
- \_\_\_\_\_ Employee's primary duties are managerial or supervisory.
  - \_\_\_\_\_ Regularly exercises discretion on a day-to-day basis.
  - \_\_\_\_\_ Employee is not closely supervised.
  - \_\_\_\_\_ Employee has the authority to make managerial and supervisory decisions, or recommendations of significance.

What percentage of time is spent in the following functions?

- \_\_\_\_\_ Assigning work to other employees.
- \_\_\_\_\_ Determining the method by which work will be performed.
- \_\_\_\_\_ Directing and supervising other employees' work.
- \_\_\_\_\_ Disciplining employees.
- \_\_\_\_\_ Evaluating employees' performance.
- \_\_\_\_\_ Interviewing and hiring employees.
- \_\_\_\_\_ Planning the work operation for employees.
- \_\_\_\_\_ Making promotion decisions.
- \_\_\_\_\_ Resolving grievances.
- \_\_\_\_\_ Setting work schedules for employees.
- \_\_\_\_\_ Training employees.

**C. Checklist for Administrative Exemption** (Checklist published by the Thompson Publishing Group, Inc. Nov. 1991, Tab 1000. Pages 41 - 43, Washington, D.C.)

- \_\_\_\_\_ Employee is paid at least \$250/week.
- \_\_\_\_\_ Employee is paid on a "salary basis" (if the following three criteria are met)
  - \_\_\_\_\_ Paid established salary on weekly or longer basis regardless of the number of hours worked.
  - \_\_\_\_\_ No suspension from work and from pay for less than one whole workweek.
  - \_\_\_\_\_ No pay reduction is made for absences caused by jury duty, service as a witness or temporary military service
- \_\_\_\_\_ Performs administrative work directly related to management policies or general department operations, or, work directly related to an academic instruction.
  - \_\_\_\_\_ Administrative activities of a department are distinguished from "production" type activities.
- \_\_\_\_\_ Regularly exercises discretion and independent judgment.

**D. Checklist for Professional Exemption** (Checklist published by the Thompson Publishing Group, Inc. Nov. 1991, Tab 1000. Pages 41 - 43, Washington, D.C.)

- \_\_\_\_\_ Employee is paid at least \$250/week.
- \_\_\_\_\_ Employee is paid on a "salary basis." (if meets the following three criteria)
  - \_\_\_\_\_ Paid established salary on weekly or longer basis regardless of the number of hours worked.
  - \_\_\_\_\_ No suspension from work and from pay for less than one whole workweek.
  - \_\_\_\_\_ No pay reduction is made for absences caused by jury duty, service as witness or temporary military service.
- \_\_\_\_\_ Primary duty is doing work requiring knowledge of an advanced type in a field of science or learning, customarily acquired by a prolonged course of specialized intellectual instruction and study.
  - \_\_\_\_\_ Usually requires an advanced academic degree (for example, accounting, engineering, law, medical technology, medicine, nursing, and pharmacology, teaching, various physical, chemical and biological sciences),
  - \_\_\_\_\_ Primary duty must be the performance of professional work (for example, a lawyer working as a paralegal does not qualify).
- \_\_\_\_\_ Work performed requires consistent exercise of discretion and judgment.
- \_\_\_\_\_ Work is predominantly intellectual and varied in character.
- \_\_\_\_\_ Work is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination or talent of the employee.

**E. Checklist for Computer Professional Exemption**

- \_\_\_\_\_ Employee is paid at least \$250/week.
- \_\_\_\_\_ Employee is paid on a "salary basis" (if the following three criteria are met). Note that this does not apply to those IT employees who are paid more than \$27.63 an hour.
- \_\_\_\_\_ Paid established salary on weekly or longer basis regardless of the number of hours worked.
- \_\_\_\_\_ No suspension from work and from pay for less than one whole workweek.
- \_\_\_\_\_ No pay reduction is made for absences caused by jury duty, service as witness or temporary military service.
- \_\_\_\_\_ Employee has primary duties in one or more of the following:
- (a) Applying systems analysis techniques and procedures;
  - (b) Designing computer systems based on, and related to, user specifications;
  - (c) Creating or modifying computer programs based on, and related to, system design specifications;
  - (d) Creating or modifying computer programs related to machine operating systems; or
  - (e) A combination of the duties as described, requiring the same levels of skill; and who must exercise discretion and make independent judgments on a regular basis.
- \_\_\_\_\_ Work performed requires consistent exercise of discretion and judgment.